O.F. 71 & 72.

19 30.

Department of L R & Sett

OFFICE Board of Revenue

STATION Madras

Misc No. 1225

Dated 16-11-30

A 1099-30
Todas

	Date	Initial
Given for copying		
Copied	16/11/30	
Examined		
Signed		
Given for despatch		
Despatched		
Indexed		
To be destroyed on *		

To whom sent

Pages in the file

Endorsement

Proprietors

16/11

19/11

(SUBJECT.)

South - (Kanara South) - Karkal Dme
Jurisdiction - Illegal detainment - Kowdoor Ve
defendant - Thammayya

R.O.C.A3-1599-30. South Kanara Collector's Office,

Camp Puttur, 16th March 1930.

A/1099.

From

G.W.Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue and Settlement, Madras.

Sir,

Suits - Karkal - District Munsif's Court - O.S.No. 45/30.

---

plaint-pp6-8 Indu Shetty alias Mada, nephew of Ramanna Mada of Kowdur village, Karkal taluk, has filed a suit against Government, O.S. No. 45/30 on the file of the District Munsif of Karkal, for a decree directing Government to pay him Rs. 105/- being the value of 15 muras of rice with interest thereon on account of an alleged illegal distraint for arrears of land revenue.

pp1-3(J) 2. Before filing the suit, the plaintiff first approached the Sub Collector, Coondapur, with a prayer for the return of the rice, which he alleged, was forcibly removed from his house by the village Potail, without proper distraint. The Sub Collector having rejected the petition, the plaintiff sent me a notice, pp77-78(J) under section 80 of the Civil Procedure Code, which was simply pp1-5 of (F) recorded by me. p9 of (F)

p5(R) 3. The destraint in question was made by the Revenue Inspector, Karkal firka, for the recovery of Rs. 133-1-0, being the arrears of assessment due for April and May 1929 in respect of holding No. 22 of Kowdur village, which stood registered in the name of one Bommu Mada. At the time of the distraint, the registered holder was dead and it is reported that no member of the defaulter's family would come forward to pay the arrears. It was with much difficulty that the Revenue Inspector collected pp46-47(J) from the tenants the revenue due for the 1st kist in March '29, i.e., at a time when the defaulter was living though bed-ridden in his wife's house at Perampalli in Udipi taluk - a distance of

19 miles from Kowdur. The next two kists also fell in arrears and the Revenue Inspector had not only to meet with greater difficulty, but also opposition and risk of assault by one Mahalinga Shetti, cousin of the plaintiff, in his act of recovering the amount. 47-48 (T)

4. The plaintiff admits that he is the wala wargdar of the holding No. 22 and the Revenue Inspector's report shows that this property in the possession of the plaintiff has an assessment of about Rs. 65/-. The moveables distrained are 15 muras of rice, not of 48 seers standard as alleged in the plaint, but of 42 seers standard, and they are the produce of the land, in respect of which the land revenue kists were in arrears. This fact is not denied by the plaintiff. Assessment is the first charge on land and the produce thereof is liable to be attached wherever it is. Under section 11, sub para 3 of the Madras -- Revenue Recovery Act II of 1864, it shall be lawful for a tenant (or wala wargdar) to deduct the value of the produce attached -- and sold from any rent which may be due by him then or afterwards to the defaulter (pattadar) In his petition to the Sub Collector the plaintiff had admitted that he did not pay the -- wala warga of Rs. 28/- per annum due to the pattadar ever since settlement. As there has been no illegality or even irregularity in the distraint, the plaintiff cannot have a real grievance. I, therefore, recorded his suit notice. I solicit Board's -- sanction to defend the suit. para 3. p 1 (T) p 9 cf. (E)

5. A copy of the plaint dated 21-1-30 is herewith submitted together with a copy of the draft written statement prepared by the Government Vakil at Karkal and approved by the Government -- Pleader, Mangalore. The records noted in the margin are also submitted for reference and return. The summons was served on me on 8-2-30. pp 6-8 below pp 3-5 below

rkal taluk Process file 21/38.
ondapur Revenue Divisional Officer's file D.Dis. 2893/29.
ollector's file D.Dis. 11385-29.

The suit stands posted to 18-4-30 for filing the written statement.

Your obedient servant,

for Collector.

3

In the District Munsiff's Court of Karkala.

O.S.No.45/1930.

Indu Shetty alias Mada — Plaintiff

Versus

Secretary of State for India in Council. — Defendant.

Written Statement on behalf of Defendant under Order 8, Rule 1 of the C.P.Code.

The Defendant above-named represents as follows:

1. His address for service of notices and process is that of the Collector of South Kanara.

2. The Plaintiff's suit is mis-conceived and is not maintainable.

3. Defendant is not aware of the tenure under which the Plaintiff enjoys the holding referred to in the plaint nor of the arrangement referred to in para 4 (b) for payment of the rent due from the Plaintiff to the pattadars and puts the Plaintiff to the strict proof thereof. In any case, these facts cannot affect the Defendant's right to collect the assessment due from the property.

4. Defendant denies that the Plaintiff was under no liability to pay the Thirwa to Government and that the deceased pattadar was alone liable to pay the same. The Plaintiff's interest in the land and the products thereof are all the first security for the Defendant's claim of assessment under law; and the Plaintiff cannot have any grievance against the Defendant in the matter of its collection from Plaintiff.

5. Defendant does not admit the relationship of the deceased pattadar to the Patel of the Village or that the Patel is on inimical terms with the Plaintiff. These matters are not relevant to the present suit.

6. Defendant admits that 15 muras of rice of 42 seers standard which were the produce of the land included in patta No.22 of Kowdoor in respect of which assessment was in arrear were distrained in the Plaintiff's house by the Revenue Inspector

of Karkal Firka towards the arrears of Revenue in May 1929, but denies the other allegations in para IV (e) of the Plaint. The distraint appears to have been effected regularly in due course of law and the Plaintiff has no cause of action against Defendant in respect of the same. Defendant emphatically denies that the Revenue Inspector distrained the rice with intent to cause wrongful loss to the Plaintiff and that Plaintiff has suffered any such loss thereby. The charge of obstruction against the Plaintiff's brother was not false and on due enquiry the Plaintiff's brother was convicted for the same by the Sub Magistrate of Karkal and the said conviction was upheld by the appellate court.

7. It is not true that the Potail and the Revenue Inspector acted in a high handed and unjust manner or that their action was illegal and calculated to cause wrongful loss to Plaintiff. Defendant denies that their action was against any of the provisions of the Revenue Recovery Act and that the Defendant is therefore liable to damages to Plaintiff.

8. The Plaintiff's estimate of the alleged loss is also excessive as the amount realised towards arrear of revenue by the auction of the distrained rice was only Rs.65/-. The Plaintiff has valued the rice too high.

9. The Plaintiff has altogether mis-conceived his remedies and has no sufficient justification to maintain a suit under Section 59 of the Revenue Recovery Act.

10. Defendant admits receipt of the notice referred to in Para VI of the plaint but as it appeared that there was no irregularity and that the Plaintiff had no grievance against Defendant the notice was recorded.

11. The interest claimed by way of damages is in any case excessive.

12. Defendant denies all the plaint allegations whi are not expressly admitted above. The Plaintiff is not entitled to any relief against Defendant in this suit which

is liable to be dismissed with costs.

South Kanara Collector's Office,
Mangalore, 16th March 1930.

For Collector.

18.3.30

In the Court of the Dt. Munsif of Karkal.

O.S. No. 45/1930.

Indu Shetty alias Mada ... Plaintiff

Vs.

The Secretary of State for India in Council represented by the Dt. Collector of South Kanara. ... Defendant.

Plaint under Section 26 and Order 7 Rule 1 of Act V of 1908 and Section 59 of the Madras Revenue Recovery Act. -

Dated 21-1-1930.

Plaintiff above named begs to state as follows:-

I. Indu Shetty alias Mada, nephew of Ramanna Mada residing in Kowdoor village, Karkal Taluk --- Plaintiff.

The address for service is as stated above.

II. The Secretary of State for India in Council represented by the Dt. Collector of South Kanara -- Defendant.

III. The Plaintiff is the owner of Abettu and Padu bettu holdings in Kowdoor village which are included in Patta No.22 of Kowdoor village. The holder of the said Patta was one Bommu Mada who died some time in April, 1929.

IV. (a). The Plaintiff is the Valawargdar of the above said holding and the Valawarga is subject to a payment of Rs.28 annually to the Pattadar. There is no liability whatsoever on the Plaintiff to pay the thirva to Goverrment. The Pattadar is himself liable to pay the same.

(b) Of the above said two holdings, Padubettu has been leased by the Plaintiff on mulgeni and his mulgeni tenant has all along been paying Rs.28 on Plaintiff's behalf for the Pattadar towards thirva to Government. Plaintiff's liability as valawargdar to pay Rs.28 to the pattadar is to be discharged in that way.

(c) Plaintiff is in no sense tenant of the Pattadar and has not to pay any rent to him. He has only to pay Rs.28 as valawargdar as stated above.

(d) The Potail of the village is a relative of the deceased Pattadar and is on inimical terms with the Plaintiff.

(e) Taking advantage of the death of the Pattadar, the Potail

has been watching an opportunity to get the Plaintiff to trouble and put him to loss, prevailed upon the Revenue Inspector of Karkal Firka to make a demand upon the Plaintiff for alleged arrears of revenue due towards the above said patta in last May. The Plaintiff fully explained the facts and circumstances of the case as set forth above to the Revenue Inspector and refused to pay anything. The Revenue Inspector on hearing the Plaintiff's explanation went away apparently satisfied, nothing daunted. The Potail some how prevailed upon the Revenue Inspector to make another attempt to cause wrongful loss to the Plaintiff and the next day i.e. on 22-5-1929 during the Plaintiff's absence from his house the Potail and the Revenue Inspector under cover of Police aid invaded his house and wrongfully and forcibly possibly removed 15 muras of rice of 48 seers holke inspite of the protests of the Plaintiff's brother who happened to be in the house, and not only took away the rice muras but also made a false charge against the Plaintiff's brother and prosecuted him for an alleged offence.

(f) For the reasons set forth above the said action of the Potail and the Revenue Inspector is not only high handed and unjust but also clearly illegal and calculated to cause wrongful loss to the Plaintiff.

(g) By the forcible and wrongful removal of Plaintiff's rice as aforesaid Plaintiff has sustained a loss of Rs.105 valuing a mura of rice at Rs.7/-.

(h) The Plaintiff brought these facts to the notice of the Revenue Divisional Officer of Coondapoor Division by means of a petition dated 24-5-1929 or there about, but the said officer without hearing the Plaintiff summarily dismissed the petition in his proceedings D.Dis. 2893/29 dated 22-8-1929.

V. The petitioner is not a defaulter as contemplated by the Madras Revenue Recovery Act and the forcible removal of his rice as aforesaid by the subordinates of the Defendant purporting to act under his authority is clearly against the provisions of that Act. The Defendant is, therefore, liable in damages to the Plaintiff on account of the illegal action of his subordinates.

VI. The Plaintiff has sent a notice dated 15-11-1929 as contemplated in Section 80 of the Civil Procedure Code by registered post

to the Collector of South Kanara and the said has been delivered to the Collector on 16-11-1929. But although the period of 2 month as mentioned in the above said section has now expired, the Collect has not redressed his grievance and has not chosen to reply to th above said notice. Hence the Plaintiff is contrained to file this suit to recover damages as set forth below.

VII. The cause of action for this suit arose on 22-5-1929 and on 16-1-1930 in Kowdoor village within the jurisdiction of this court.

VIII. This suit is valued for the purpose of court-fee and jurisdiction at Rs.113-12-0.

IX. (a) Plaintiff therefore prays for judgment and decree directing Defendant to pay to Plaintiff Rs.105-0-0 the value of 15 muras of rice as above said. ... 105-0-0

(b) Interest on the said amount by way of damages from 22-5-1929 up to date of Plaint at 12½ per cent per annum. ... 8-12-0

Total. 113-12-0

(c) All costs of this suit with future interest at 6% per annum.

(d) Granting Plaintiff such other reliefs as in the circumstances of the case the court might deem fit.

x x x x

Sd/-
Pleader for Plaintiff

True copy

For Collector.

19.3.30.

R. F. XXII-A-19.—26,004. 31-1-29 (6).

Subject.— 9

FOR MEMBER.

Smlé (S.K) Kanara D.M.C.
G.S.No 45/1930 - Defence.
Further information called for.

READ AGAIN B. P. No. _____, dated _____ 192

" " " _____ ; " _____ 192

READ ALSO :—

Register No. _____, From the A-1099/30-R, No. _____, dated _____ 192

" " _____, " " _____, " _____, " _____ 192

" " _____, " " _____, " _____, " _____ 192

3.30

RESOLUTION. See A 1099/30-1 9 1-4-30.
No. _____, dated _____ 192

I the Collector of Smlé Kanara is requested to submit a copy of the local G.O.S letter in the matter. He is also requested to report if there is any good evidence to establish that the rice attached and sold is the produce of the holding on which the arrear accrued.

If necessary, the Collr should (1+6) The Collr is requested to obtain sufficient long adjournment

dg 1/4/30 pm wire

S. Kanara.

DESPATCHED
1-APR 1930

1/4

1-4-30.

A 1319

Ref.A3-No.1599-30. 19 South Kanara Collector's Office,

Camp Udipi, 6th April 1930.

From

G. W. Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Suits - (South Kanara) - Karkal - District Munsiff's Court - O.S.45/30.

****

69 abau Board's Ref.A.No.1099-30-1, dated 1st April 1930.

****

I enclose the copy of the Government Pleader's letter Ref.No.4/30, dated 9th March 1930 containing his opinion.

2. The records connected with the attachment and sale of the rice in question, (Karkal Taluk Process file 21/38), the petition of the Plaintiff to the Revenue Divisional Officer (Revenue Divisional Officer's D.Dis.File No.2893/29) and the suit notice (Collector's file D.Dis.11385-29) are in the Board's office. Without these records, it is not possibl to say whether there is good evidence to establish that the rice attached and sold is the produce of the holding in question. I request, therefore, that all these records may be returned to me for reference.

3. It must, however, be stated here that the Plaintiff has not chosen to deny in his plaint that the rice is the produce of the holding on which the arrear accrued.

4. I have requested the Vakil to obtain as long an adjournment as possible.

Your obedient servant,

For Collector.

M.D'S.8/4.

8.4.30

R. F. XXII-A-19.—26,004- 31-1-29 (6).

Subject.—

FOR MEMBER.

Suits (Kanara South).
Karkal Dmc - 0545/30
Illegal distraint - Rowdu
vg - Defence sanctioned

READ AGAIN B. P. No. _____, dated _____ 192

" " " _____, " _____ 192

READ ALSO :—

Register No. _____, From the A 1099-30 No. p 104 Q, dated _____ 192

" " _____, " " A 1319-30, p 104 Q, " _____ 192

" " _____, " " _____, " _____, " _____ 192

RESOLUTION. Misc No. 1225, dated 16-4-1930

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Collector subject to the following modifications:-

(i) In paras 3 and 4 for 'pattadars' and 'pattadar' substitute 'holders or holder of land under ryotwari tenure'.

(ii) In para 6, first sentence for 'patta' substitute 'holding'

(iii) At the end of the first

Sentence para 12 add
'and puts the plaintiff
strict proof thereof.'

16-4-30.

Ken -
16W30
pm 16.4.30

To the Collector of South Kanara
with records returned as
per list (paras p2 cf)

Date of Hearing 18.4.30

Reis (S. Nagar) Karikal Dtfe - cp. 407/30

Illegal distraint - Kanakkuvazhi - Defence.

A 1933, 39

To Ad

Ipl. 1-2 cf. The tenants have no right to fair rent.

Q. The plff. in this suit is not a "Landholder" as defined in Sec 1 of Act II of 1864 accd the provisions of ~~Act~~ Sec 5 of the Act would therefore apply. Under Sec 2 the production of the accounts and receipts would arise. In the present case, rice is the plff's share was attached and not the crop on the land. To prove in the suit, Def. have to prove that the rice is the produce of the holding on which the arrear accrued. The tenant says ~~that~~ that the 15 measures of rice attached were sold is the produce of the land.

p 345. Madras Law Vol I

p 346 of Dr—

p 4 f (J)

para 4. p 2 c.f.

3). The tenant has not raised the legal question or the substantial question as set out in S.C. 13.2.11. It may

para 5. p 2. cf.

[illegible] 29-3-30

S

ASL(dis)

30 A

draft sub

14/30 pm 4.30

1-4-30

Ag cost Rs 1,055/30 or so Rs 5 cf -

Costs reg Rs 1315/30 Rs 10 cf -

To Ad

The S.A.'s letter dt 31.8.c.f does not give a definite direction on the merits of the case. Rights therein may [illegible] a definite direction from the Ct.

2) ~~The reasons rejected will be set out~~

Eg In view of para 3 of the Collr's letter it is fruitless to [illegible] any further report in the matter. The plaint is more ~~or~~ orders on the lines of the suit notice at pp 1-5 of (T) Hence the plt (notice given) does not disclose the date on which the arrear accrued. Under Sec the R1's report at pp 46-48 of (J) shows that the

The Sub Collr's order at pp. 77 of (J) is also for personal

p347. Vol I Madras Code.

The distraint is legal under Sec 11 of Act II of 1864.

In paras 3 and 4 the words "pattadar and pa may be replaced by "holders (holder) of land and ryotwari tenure"

In para 6 for "patta", "holding" may be substitu At the end of the first sentence, para 12 the following be added:- And puts the pltff to strict proof of t

15/4/30

The defence of the suit may sanctioned and the written statemen aforesaid subject to the above modi

15-4-30

15/4/30

To AS

Draft Submitted

16/4/30

Sent today

16-4-30